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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/766,470 | 01/29/2004 | Kazumasa Fukazawa | VX032571US | 3719 |
| 21369 | 7590 | 08/22/2006 | EXAMINER | |
| POSZ LAW GROUP, PLC 12040 SOUTH LAKES DR. SUITE 101 RESTON, VA 20191 | | | SPISICH, GEORGE D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3616 | |

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------|-----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/766,470 | FUKAZAWA ET AL. |
| | Examiner | Art Unit |
| | George D. Spisich | 3616 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 June 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4 is/are pending in the application.

4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 and 2 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 January 2004 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 1/29/04, 7/2/04.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the Invention of Group 1, claims 1 and 2 in the reply filed on June 26, 2006 is acknowledged.

Accordingly, claims 3 and 4 have been withdrawn as they relate to the non-elected Invention and have not been examined in this Action.

Information Disclosure Statement

In the IDS mailed 7/2/04, the Publication Date of JP 2978894 appears to be incorrect (10/9/1999 instead of 9/10/1999). Examiner has considered the JP '894 reference as this reference has been provided on IDS mailed 1/29/04.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (USPN 6,098,739).

Anderson et al. discloses a structure of a construction machine comprising a main frame (34) provided in a central portion of the construction machine and extending in the longitudinal direction of the construction machine.

Traveling units (44) are attached to left and right sides of the main frame and a working machine (596) is attached to a front portion and/or a rear portion of the main frame.

The main frame is made from multiple portions/modules that are connected together (such as by welding). There is a module (34 and 56) which is a portion of the main frame to which external force is applied by the traveling units and the working machine and another portion/module (26) that is combined together to form the main frame.

With respect to the modules being formed from a unitary casting and a sheeted module, the method of forming a device is not germane to the issue of patentability of the device itself, therefore this limitation has not been given patentable weight.

Furthermore, it is within ordinary skill of one in the art at the time the invention was made to fabricate portions of a structure by any known methods, such as unitary casting and from a sheet module, to construct a structure.

With respect to the broad limitation that one of the modules is formed so that the module "can be selected" from modules of a plurality of kinds of specification to form a main frame with different specifications, it is with ordinary skill in the art at the time the invention was made to modify a portion of one of the module or provide a module of different specifications (which may be slight differences) to construct a main frame

having different specifications as one of ordinary skill in the art has the ability and knowledge and is well known in the art to "customize" a structure and the structure of Anderson et al. clearly has the ability to be "customized" as any structure would.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anderson et al. (USPN 6,138,786), Matsuda (USPN 4,342,470), Anderson et al. (USN 6,293,364), Weissbach (USPN 5,568,841), Nagatsuka (USPUB 2002/0139601), Kamlukin (USPN 4,726,440), Nagatsuka (USPN 6,575,262), Macht (USPN 4,514,007), Anderson et al. (USPN 6,167,980), Dershem et al. (USPUB 2004/0026153).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George D. Spisich whose telephone number is (571) 272-6676. The examiner can normally be reached on Monday-Friday 9:00 to 6:30 except alt. Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George D. Spisich
August 21, 2006

MDS *PN* 8/21/06
PAUL N. DICKSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600